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C.R.P.No.293 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.293 of 2022

and

C.M.P.No.1387 of 2022

Asha Vijayaraghavan

... Petitioner

Vs.

1.E.Krishnaveni Ammal

2.E.Munuswamy

3.K.Parvathy

4.K.Sasikumar

5.V.Suriya

6.S.Kanniammal @ Sanothse

7.E.Murugesan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.121 of 2020 on the file of the Principal District and Sessions Court, Thiruvallur.



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For Petitioner : Mr.N.R.Anantha Rama Krishna

For R2 : M/s.V.Kaviya
For Mr.A.R.Suresh

For R3 & R4 : Mr.P.Rajendra Kumar

ORDER

The Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint instituted in O.S.No.121 of 2020.

2. The revision petitioner is the 6th defendant and the respondents 1 and 2 are the plaintiffs, who instituted a Suit for Partition in O.S.No.121 of 2020.

3. The learned counsel for the revision petitioners states that the Suit Scheduled Property is a self-acquired property of the revision petitioners and the Partition Deed was registered on 28.04.1989 and therefore, the Suit filed after three (3) decades by the respondents 1 and 2 is not maintainable and thus, the plaint is to be struck off.



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4. The learned counsel for the respondents objected the said contention by stating that the subject properties were purchased by the revision petitioner from the legal heirs of the one Kanniyappan and in this regard, the plaintiffs have set out the facts and circumstances in the plaint. Thus, the issues are to be adjudicated on merits and in accordance with law.

5. The cause of action set out in the plaint in O.S.No.121 of 2020 reveals that Deed of Partition was registered on 28.04.1989 and on 19.03.1991 an agreement for sale was entered in the name of late Elumalai Reddy. On 11.10.1995, the property was registered in the name of Kanniyappan. During the year 2004 when the plaintiff's father died, on various dates when the defendant turned hostile towards the plaintiff. On several dates when the family members are invited for amicable partition. On 09.02.2020 when Kanniyappan died, during the first week of March 2020 when the plaintiff came to know about the sale of the Scheduled Property to the 6th defendant. On 11.06.2020, when the plaintiffs issued legal notice for partition of the properties at Neduvarambakkam Village, Chozhavaram Firrka, Ponneri Taluk, the plaintiffffs have chosen to institute a Suit for partition.



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6. The bundle of facts as narrated in the cause of action paragraph and the plaint is to be taken as a whole for the purpose of striking off the plaint. When several facts are narrated, it is preferable to adjudicate the issues on merits and in accordance with law rather than striking off the plaint, which would cause prejudice to the interest of the plaintiffs and deprive the right to adjudicate the issues on merits. The power of the High Court under Article 227 of the Constitution of India and the principles to be adopted are considered in the following Judgements:-

7. In paragraph 14 at page 217 of **Waryam Singh and another Vs. Amarnath and another** reported in [AIR 1954 SC 215], wherein, the Supreme Court neatly formulated the ambit of High Court's power under Article 227 in the following words:

“The power of superintendence conferred by Article 227 is, as pointed out by Harries C.J., in ‘Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee’, AIR 1951 Calcutta 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”



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8. The Chief Justice Harries in the Full Bench decision in **Dalmia case** (*cited supra*) stated that the principles on which the High Court can exercise its power under Article 227 very succinctly which would better, quote :
“Though this Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that the right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in **Manmathanath Vs. Emperor** [AIR 1933 Calcutta 132]. In that case a Bench over which Sir George Rankin C. J. presided held that Section 107, Government of India Act (which roughly 2 corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power, which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep Subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.”



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9. The power of the High Court under Article 227 to be plenary and unfettered, but at the same time, the High Court should be cautious in its exercise. No doubt, when there is gross abuse of jurisdiction, the High Court can interfere under Article 227, whether there is gross abuse or not, is the factual aspect, which is to be considered in each case. Every case cannot be brought under the principles of gross abuse of jurisdiction.

10. In the present case, the Suit is for partition and the revision petitioner has not chosen to file a petition under Order VII Rule 11. More so, perusal of plaint would reveal that several facts are involved and thus, adjudication of issues are eminent in the present Suit.

11. That being the factum, the parties are at liberty to adjudicate the Suit on merits and in accordance with law and by following the procedures as contemplated.

12. The Trial Court shall conduct the case without granting unnecessary adjournments at the instance of the parties. In the event of



seeking adjournments on flimsy grounds, the Trial Court shall award maximum costs.

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13. Accordingly, the Civil Revision Petition in C.R.P.No.293 of 2022 stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
The Principal District and Sessions Court,
Thiruvallur.



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S.M.SUBRAMANIAM, J.

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